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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,365	03/09/2004	Roger Dean Neitzell	066042-9276-04	2254

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EXAMINER	
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ART UNIT	PAPER NUMBER
3724	

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11/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/796,365	NEITZELL ET AL.	
	Examiner	Art Unit	
	Hwei-Siu C. Payer	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 November 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6,8-10,12-21,23 and 24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,6,8-10,12-21,23 and 24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

Continued Examination Under 37 CRR 1.114

A request for contended examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on November 1, 2007 has been entered.

Claims Rejection - 35 U.S.C. 112, second paragraph

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 13-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) The scope of claim 13 vague it is not clear what the first position is. It appears at line 2, after "position,", --in which the first grip surface and the second grip surface are generally aligned-- should be added.

(2) In claim 13, lines 3-4, it appears "the first grip surface and the second grip surface are generally aligned". should read --the second grip portion defines an obtuse angel with respect to the body axis--.

(3) In claim 13, lines 4-5, it appears "defines an obtuse angle with respect to the body axis" should read --is generally perpendicular to the first grip surface--.

Appropriate correction is required.

Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-4, 6, 8, 10, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Nagel (U.S. Patent No. Des. 377,303) and Alsruhe (U.S. Patent No. 6,102,134).

Kikuchi et al. show a reciprocating saw comprising a housing (14, see Fig.1) having a body (not labeled) and a hand grip (not labeled) integrally formed with the body; the body housing a motor (44) and a drive mechanism (16); a reciprocating spindle (21) for supporting a tool element (46); the drive mechanism (16) being operably connected to the spindle (21) for causing reciprocation of the spindle (21); a switch assembly (42) operable to electrically connect the motor (44) to a power source (38); a wiring arrangement (not labeled, see Fig.1) electrically connecting the switch assembly

(42) to the motor (44), and a trigger (40) substantially as claimed except the body and the hand grip are of one single piece (14) and therefore not adjustable with respect to each other.

Nagel teaches it is desirable to provide a power tool that is adjustable into three different positions, a first position in which the tool body and the hand grip are generally aligned (see Fig.8), a second position in which the tool body and the hand grip are at an obtuse angle (see Fig.7), and a third position in which the tool housing and the hand grip are generally perpendicular to each other (see Fig.2).

Therefore, it would have been obvious to one skilled in the art to modify Kikuchi et al. by having the one piece housing formed of two separated pieces, namely a body and a hand grip, and adjustably connecting the two pieces together so that they are angularly adjustable in a plurality of different positions to facilitate the use of the power tool in a confined working area as taught by Nagel.

The power tool of Kikuchi et al. as modified above shows all the claimed structure except it lacks a locking mechanism, an actuator, and a biasing means.

Alsruhe teaches providing a power tool with a locking mechanism having recesses (46,48) and a projection (90) engageable in a selective one of the recesses (46,48) for locking the hand grip (14) of the power tool in a plurality of different positions; an actuator (70) for moving the locking mechanism between a locked condition and an unlocked condition; and means (80) for biasing the locking mechanism toward a locked condition.

Therefore, it would have been obvious to one skilled in the art to further modify Kikuchi et al. by providing the power tool with a locking mechanism, an actuator, and a biasing means for adjusting the hand grip with respect to the housing of the power tool as taught by Alsruhe.

Regarding claim 4, Alsruhe shows a trigger (28) positioned intermediate the first and second ends of the hand grip (14).

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Nagel (U.S. Patent No. Des. 377,303) and Alsruhe (U.S. Patent No. 6,102,134) as applied to claim 1 above, and further in view of Yang (U.S. Patent No. 4,976,173).

The power tool of Kikuchi et al. as modified above shows all the claimed structure except the power tool is powered by a battery (38) contained in the power tool rather than by an external power source via a cord.

However, it is well known in the art to use a power cord for supplying an external energy source to a power tool as evidenced by Yang (see column 3, lines 40-42).

Since both Kikuchi et al. and Yang teach methods of powering a power tool, it would have been obvious to one skilled in the art to substitute the power cord of Yang for the battery of Kikuchi et al. to achieve the predictable result of powering a power tool.

4. Claims 12, 16-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Alsruhe (U.S. Patent No. 6,102,134) and Kishi (U.S. Patent No. 4,522,270).

Kikuchi et al. show a reciprocating saw comprising a housing (14, see Fig.1) having a body (not labeled) and a hand grip (not labeled) integrally formed with the body; the body housing a motor (44) and a drive mechanism (16); a reciprocating spindle (21) for supporting a tool element (46); the drive mechanism (16) being operably connected to the spindle (21) for causing reciprocation of the spindle (21); a switch assembly (42) operable to electrically connect the motor (44) to a power source (38); a wiring arrangement (not labeled, see Fig.1) electrically connecting the switch assembly (42) to the motor (44), and a trigger (40) substantially as claimed except the body and the hand grip are of one single piece (14) and therefore not adjustable with respect to each other.

Alsruhe teaches it is desirable to provide a power tool having a hand grip (14) that is adjustable relative to the tool body (12) of the power tool by providing the power tool with a locking mechanism having recesses (46,48) and a projection (90) engageable in a selective one of the recesses (46,48) for locking the hand grip (14) of the power tool in a plurality of different positions; an actuator (70) for moving the locking mechanism between a locked condition and an unlocked condition; and means (80) for biasing the locking mechanism toward a locked condition.

Therefore, it would have been obvious to one skilled in the art to further modify Kikuchi et al. by providing the power tool with a locking mechanism, an actuator, and a biasing means for adjusting the hand grip with respect to the housing of the power tool to facilitate the use of the power tool in a confined working area as taught by Alsruhe.

It is noted, in Kikuchi et al. as modified above, the actuator (70, note column 3, lines 23-24 of Alsruhe) is located within an aperture (64) within the hand grip (14) rather than "extending outwardly" from the hand grip.

Kishi shows an actuator (6) extending outwardly from a tool body (see Fig.1).

Therefore, it would have been obvious to one skilled in the art to further modify Kikuchi et al. by having the actuator extending outwardly to facilitate easy engagement by a user's hand as taught by Kishi.

Regarding claim 19, Alsruhe shows a trigger (28) positioned intermediate the first and second ends of the hand grip (14).

5. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Alsruhe (U.S. Patent No. 6,102,134) and Kishi (U.S. Patent No. 4,522,270) as applied to claim 12 above, and further in view of Nagel (U.S. Patent No. Des. 377,303).

The power tool of Kikuchi et al. as modified above shows all the claimed structure except the power tool lacks a third position in which the tool housing and the hand grip are generally perpendicular to each other.

Nagel teaches it is desirable to provide a power tool that is adjustable into three different positions, a first position in which the tool body and the hand grip are generally aligned (see Fig.8), a second position in which the tool body and the hand grip are at an obtuse angle (see Fig.7), and a third position in which the tool housing and the hand grip are generally perpendicular to each other (see Fig.2).

Therefore, it would have been obvious to one skilled in the art to further modify Kikuchi et al. by providing the power tool with an additional adjustment position (i.e. a perpendicular position) to further maximize the adjustability of the power tool for use in a confined working area as taught by Nagel.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (U.S. Patent No. 6,021,573) in view of Alsruhe (U.S. Patent No. 6,102,134) and Kishi (U.S. Patent No. 4,522,270) as applied to claim 12 above, and further in view of Yang (U.S. Patent No. 4,976,173).

The power tool of Kikuchi et al. as modified above shows all the claimed structure except the power tool is powered by a battery (38) contained in the power tool rather than by an external power source via a cord.

However, it is well known in the art to use a power cord for supplying an external energy source to a power tool as evidenced by Yang (see column 3, lines 40-42).

Since both Kikuchi et al. and Yang teach methods of powering a power tool, it would have been obvious to one skilled in the art to substitute the power cord of Yang for the battery of Kikuchi et al. to achieve the predictable result of powering a power tool.

Remarks

In response to Applicant's arguments regarding Alsruhe's "automatic" pivoting, Examiner disagrees this is the case. In Alsruhe (see column 3, lines 50-53), the actuator (70) needs to be moved against the biasing force of spring (80), and as this

occurs, the pin (90) is moved channels (94,96). Thereafter, the housing members (12,14) are pivoted respect to one another (see column 3, lines 53-55). In other words, the actuator (70) has to be moved first before the housing members (12,14) can be pivotally adjusted. Thus, the Alsruhe's pivoting does not occur "automatically" as Applicant alleges.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for official communications and 571-273-4511 for proposed amendments.

H Payer
November 16, 2007

/Hwei-Siu C. Payer/

Primary Examiner, Art Unit 3724